

**IN THE UNITED DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

MITCHELL C. MOONEY,)
HARRISON GILMORE,)
DONNIE L. THARP, and)
SAMUEL KING, on behalf of)
themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

CIVIL ACTION NUMBER:

3:07-cv-1018

JURY DEMAND

ARROW DISPOSAL/ADVANCE/)
URRUTIA, INC.,)

Defendant.)

**PLAINTIFFS' MOTION TO FACILITATE NOTICE
PURSUANT TO §216(b) OF THE FAIR LABOR STANDARDS ACT**

COME NOW plaintiffs Mitchell C. Mooney, Harrison Gilmore, Donnie L. Tharp and Samuel King, in the above-styled lawsuit, and respectfully request this Court enter an Order allowing notice be sent to all hourly employees currently employed with the defendant or previously employed within the last 3 years in the position of Truck Driver. In support of said request, plaintiffs state the following:

1. This case was brought pursuant to the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, specifically the collective action provision of §216(b).
2. Defendant has answered the complaint and admits that this Court has federal question jurisdiction and that venue is proper in this Court. Defendant further admits and that the plaintiffs were employed during the relevant time period.¹
3. Plaintiffs allege that the defendant has failed to pay them overtime in violation of the FLSA and that said failure was intentional and/or reckless.
4. Plaintiffs maintain that they were routinely required to work over 40 hours per week without being properly compensated.
5. All of the plaintiffs occupied the position of Truck Driver.
6. Defendants admit that on or about June 4, 2007, Advanced Disposal Services acquired Urrutia, Inc., which was d/b/a Arrow Disposal, and that Advanced Disposal Services is now d/b/a Arrow Disposal. Defendants further admit that Urrutia, Inc. is now owned by Advanced

¹In its Answer, the defendant states that Harrison Gilmore was not employed with the defendant. In his Declaration, Mr. Gilmore states that he worked for the defendant for approximately 3-6 months in 2005.

Disposal Services. Defendants admit they are doing business in the State of Alabama.

7. In support of the motion, the plaintiffs have offered the declarations of the named plaintiffs. The declarations of the plaintiffs establish that they are similarly situated.
8. The declarations of the plaintiffs more than satisfy the “lenient” standard the Eleventh Circuit Court of Appeals has established that district courts should follow when deciding whether to issue Notice to other similarly situated individuals.
9. Plaintiffs maintain that the attached proposed Notice is fair and adequate. The notice fairly informs the potential opt-in plaintiffs of the pendency of the lawsuit, that the defendant denies the allegations and, if they desire, how to opt-into the case. The notice also advises the potential opt-ins that the Court expresses no opinion regarding the merits of the plaintiffs’ claims.

WHEREFORE, PREMISES CONSIDERED, the named plaintiff and opt-in plaintiffs respectfully request that this Court authorize nationwide notice to be sent to all individuals employed in the position of Truck Driver with the defendant during the last three years. If notice is

granted, plaintiffs would request that the defendant be required to provide names, addresses and social security numbers to plaintiffs' counsel within ten (10) days.

Respectfully submitted,

/s/Gregory O. Wiggins
Gregory O. Wiggins
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CERTIFICATE OF SERVICE

I do hereby certify that I have filed the above and foregoing by CM/ECF today, April 7, 2008, with copies being served on:

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